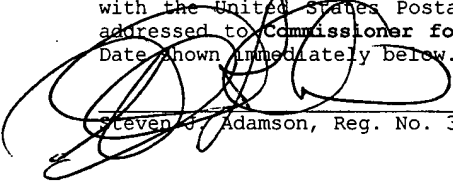


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Application) PATENT APPLICATION
)
Inventor(s): Liu, Ching Yiu)
)
Serial No.: 10/719,675) Examiner: Castellano, Stephen J.
)
Filed: November 21, 2003) Art Unit: 3727
)
Title: Ceramic Metallic Liquid)
Holding Vessel)
_____)

CERTIFICATE OF MAILING UNDER 37 C.F.R. Section 1.8

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313-1450 on the Signature Date shown immediately below.


Steven J. Adamson, Reg. No. 32,776

8-26-05
Signature Date

COMMENT ON THIRD PARTY SUBMISSION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir or Madam:

It has come to Applicant's attention that U.S. Patent Application no. 10/969,778 (the '778 application) has been submitted in its published form (Pub no. 2005/0139567) under the third party submission provisions of 37 C.F.R. §1.99. The '778 application was submitted by its assignee, Gerber Far East 1959 Ltd. (Gerber). Applicant offers the following comments on this submission.

Background

Pacific Cornetta, Inc. (PCI), the assignee of the present application, has been making double walled vessels since the late 1990s and is a leading producer of such products. PCI developed the subject matter of the pending claims and engaged Gerber as a manufacturer. PCI supplied a prototype to Gerber.

As part of a compensation package presented to Gerber to manufacture the product, PCI offered Gerber a license to sell the

product in Europe. Gerber assented and began selling the product in Europe, but when sales proved weak, Gerber sought to sell the product in the U.S. Gerber's U.S. sales would eventually be blocked by any patent issuing on the present application. In an attempt to attain rights to sell the product in the U.S., Gerber then began to allege an inventive contribution to the present application.

Gerber has been asked on several occasions to identify what their alleged inventive contribution is, who made it, and what evidence supports it. Gerber has not answered these questions and, more importantly, has supplied **no evidence** of inventive contribution. The failure of Gerber to present evidence when asked to do so and further knowing that presentation of evidence would likely resolve this matter in their favor brings into serious question the existence of such evidence.

Gerber's actions appear to be motivated by greed and not substance.

Not Prior Art

Referring specifically to the submitted document, the '778 application does not disclose information that could be considered prior art for purposes of §102 and §103.

In addition, the priority claim of the '778 application is invalid because it claims priority on an application with which there is no common inventor. The earliest possible filing date that can be properly afforded the '778 application is October 20, 2004 (nearly a year after the priority date of the present application).

Nonobviousness - Secondary Considerations

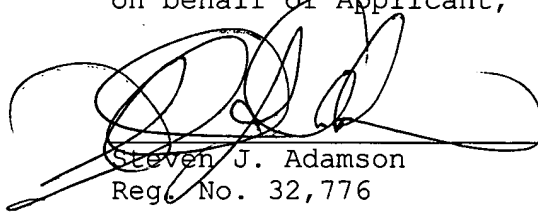
Commercial importance has long been viewed as a secondary indicator of nonobviousness. Applicant submits that the efforts of Gerber, in attempting to attain rights to the present invention, reflect the commercial importance of the present invention. If it were obvious, it would already be out on the market and Gerber and other competitors (see the first Response to Office Action Under 37 C.F.R. §1.111) would not be vying to attain rights or otherwise distributing or attempting to distribute the claimed invention.

Inventorship

Applicant states, for the record, that it has conducted a thorough, objective determination of inventorship and believes that it is correct as stated.

Respectfully Submitted
on behalf of Applicant,

Date: 8-26-05



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